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WORKING DRAFT

NO. 2

10 NOV 1975

OGC Has ReviewedREPORT OF AGENCY TASK FORCE REVIEW
OF GAO AUDIT OPTIONS

The Agency Task Force of Directorate representatives established at the request of the Director to develop recommendations for ground rules which should apply to any resumption by GAO of audit of Agency activities has reached conclusions which are set forth in the paragraphs which follow.

I. STATEMENT OF THE PROBLEM

Shall GAO resume audit of Central Intelligence Agency activities and if so with what limitations or restrictions.

II. OFFICIAL POSITIONS

A. Comptroller General

It is assumed the Comptroller General favors resumption of GAO audit of Agency activities, provided it could have sufficient access to produce meaningful evaluations.

B. House and Senate Select Committees

We infer from conversations with staff representatives of the Committees and from congressional questions that the Committees are likely to recommend resumption of GAO audit of Agency activities.

C. Rockefeller Commission

The Commission Report made no reference to GAO audit, recommending instead that the President's Foreign Intelligence Advisory Board assume an audit responsibility.

D. Congress

At least one bill has been introduced (by Senator Proxmire) to formally direct resumption of GAO audit of Agency activities.

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E. Director of Central Intelligence

The Director is on record as being of the opinion that arrangements can be made for resumption of GAO audit of Agency activities subject to necessary limitations and to agreement on security procedures and on distribution and content of reports on audits.

III. DISCUSSION OF OPTIONS

A. General

The Task Force in preparing this report gave careful attention to (1) the history of GAO audit relationships with the Agency, (2) the nature of GAO audits as currently conducted in other agencies and (3) the impact on CIA of resumption of GAO audit of Agency activities.

1. History of GAO audit relationships.

a. Initial audits. Following enactment of the Central Intelligence Agency Act of 1949, the Director, notwithstanding the very broad and unusual powers granted to CIA by the Act, requested site audit of certain expenditures consistent with arrangements initiated in August 1946 with the predecessor Central Intelligence Group. Under those arrangements the site audit covered expenditures referred to as vouchered funds (those which can be accounted for and audited in conformance with the laws that apply to other Government agencies and with standard Government regulations and procedures) as distinguished from confidential funds (accounted for outside the Agency solely by certification of the Director of Central Intelligence under the authority of section 10(b) (now 8(b)) of the CIA Act of 1949.) The audit process was essentially limited to a review of fiscal officers' accounts, including examination of certain related vouchers and

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other documents evidencing the expenditure of appropriated funds to determine whether the expenditures were made in accordance with the National Security Act of 1947, the CIA Act of 1949 except Section 8(b) and with laws and regulations generally applicable to Government expenditures. In addition, the site audit staff performed liaison functions between CIA and the General Accounting Office as requested by CIA officials. Potentially questionable expenditures were submitted to the site audit staff for review prior to payment. Reports were not issued to anyone outside CIA, and formal exceptions to the expenditures made were not taken but instead any questions were discussed informally with CIA officials.

b. Expansion of Scope. Subsequent to enactment of the Central Intelligence Act of 1949 the General Accounting Office broadened the type of audit made of the activities of Government agencies generally. Under the new "comprehensive" audit approach the General Accounting Office construed an agency's financial responsibilities as including the expenditures of funds and the utilization of property and personnel in the furtherance of authorized programs or activities in an efficient, economical and effective manner. In 1959 the General Accounting Office asked permission to discontinue audit of CIA, however, the CIA Subcommittee of the House of Representatives Committee on Armed Services requested that the General Accounting Office actually broaden the scope of its audit of CIA activities. This request was made in a letter to the Director of CIA from the Honorable Paul J. Kilday, Chairman, Special Subcommittee on CIA, Committee

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on Armed Services, dated 19 June 1959. Following a series of extensive discussions, the Director proposed to the Comptroller-General in a letter dated 16 Oct 1959 certain principles for the expanded audit. The Comptroller-General in his letter to the Director dated 21 Oct 1959 agreed to proceed with plans for the expanded audit on a trial basis within the principles expressed in the Director's letter.

c. Discontinuance of Audit. In 1961, after completion of a trial period, GAO concluded that under existing security restrictions on its audit of CIA activities, it did not have sufficient access to make comprehensive reviews on a continuing basis which would produce evaluations helpful to the Congress. It further determined that continuation of the limited financial audit effort which it had conducted in prior years at the CIA would not serve a worthwhile purpose; it therefore proposed to discontinue all activities at the Agency. At about this same time the Agency was engaged in a major reorganization and strengthening of its comptroller and internal audit functions. (The Agency Audit Staff reports directly to the Director of Central Intelligence through the Inspector General and observes the same audit principles and standards as the GAO.) Based in part upon these developments and in recognition of the validity of the need for restrictions on the scope of audit the Honorable Carl Vinson, Chairman, Committee on Armed Services, House of Representatives agreed in July 1962 to the Comptroller General's recommendation to terminate all audit efforts; since that time GAO has not conducted any reviews at the CIA nor any reviews which focus specifically on CIA activities

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except for two recent reviews discussed in the next paragraph.

d. Ad Hoc Reviews. Recently, the Honorable Lucien Nedzi, Chairman, Special Subcommittee on Intelligence, requested GAO to review the processes followed for the sale of the assets of two of our air proprietaries whose relationship with the Agency had become generally known to the public. ^{Both have} One review has been completed and a classified report, commenting favorably on the method and propriety of the sale, was issued directly to Mr. Nedzi. The second review is in process.

2. Current Nature of GAO audits in other agencies.

a. The objectives of GAO audits are as follows:

(1) Whether the agency is carrying out only those activities or programs authorized by the Congress and is conducting them in the manner contemplated to accomplish the objectives intended. Where appropriate, a review is also made for the purpose of considering whether the authorized activities or programs effectively continue to serve their originally intended purpose.

(2) Whether the programs and activities are conducted and expenditures are made in an effective, efficient, and economical manner and in compliance with the requirements of applicable laws and regulations, including decisions of the Comptroller-General.

(3) Whether the resources of the agency, including funds, property, and personnel, are adequately controlled and utilized in an effective, efficient, and economical manner.

(4) Whether all revenues and receipts arising from the operations under examination are collected and properly accounted for.

(5) Whether the agency's accounting system complies with the principles, standards, and related requirements prescribed by the Comptroller-General.

(6) Whether reports by the agency to the Congress and the central control agencies disclose properly the information required for the purposes of the reports.

b. The usual emphasis of current GAO audits is on the "big picture" and typically includes reviews of (1) activities of the agency against the backdrop of governing laws and Congressional intent, (2) management controls and (3) budgetary and financial control practices. Continuing attention is given to possible duplications of effort within an agency or with activities of other agencies.

3. Impact on CIA of Resumption of GAO audit of agency activities.

a. It is patently obvious that unlimited access by GAO to agency activities to achieve the general and specific objectives discussed above and full public reporting of the results of audits would be unacceptable from any viewpoint.

b. The comments and conclusions which follow take into consideration the positions of each of the Directorates based upon careful soundings by the respective directorate representatives of the principal components in their Directorates for an objective analysis of the potential impact of a comprehensive GAO audit on the diverse functions of each such component.

(1) Each of the Directorates except the Directorate for Intelligence (DDI would of course limit access to sensitive documents and information received from other Directorates in accordance with guidelines of the component) has voiced a variety of very legitimate concerns about a comprehensive and unrestricted GAO audit. These concerns all basically relate in a broad sense to the need to protect the sensitive intelligence sources and methods which the Director by statute must protect from unauthorized disclosure and ~~more~~ ^{also} specifically to an urgent need to continue the Director's 8(b) authorities free of any ambiguity about how they might be compromised under the terms of an audit agreement with GAO. In the context of these concerns there is general agreement in a pragmatic sense that in determining the potential scope of audit should GAO nevertheless resume an audit function, a clear distinction must be made between activities which would provide information ^(to the auditors) which if divulged would represent an unauthorized disclosure of intelligence sources and methods versus activities which would directly compromise the Agency mission and thus cannot be allowed, e.g., various external verifications or evaluations of transactions or activities not openly Agency sponsored. Examples of such latter transactions or activities are attached as Exhibit A.

(2) There presumably should be no real controversy in reaching agreement with GAO upon the types of activities which cannot be allowed because they would compromise the

Agency mission. Likely to be much more difficult will be the attempt which the Task Force believes must be made to deny GAO access to the following kinds of activities or information involving sensitive intelligence sources and methods:

- (a) "Identities of agents, sources and persons and organizations involved in operations which, if disclosed, would subject them to personal physical danger, or to extreme harassments, or to economic or other reprisals."
- (b) "Material provided confidentially by cooperating foreign intelligence services."
- (c) "Diplomatic exchanges or other material disclosure of which would be embarrassing to foreign governments and damaging to the foreign relations of the United States."

- (d) "Specific details of sensitive intelligence methods and techniques of collection."

(3) The Task Force rationale for advocating denial of GAO access to the foregoing is that the most effective way of precluding unauthorized disclosure of information is to prevent access to the information. The Agency has established the right to deny these categories of information to the Congressional Oversight Committees, House and Senate Select Committees, Office of Management and Budget and to the Congressional Investigative Group now reviewing Sigint activities as a basis for recommending the continuing responsibility for that function as between CIA and NSA.

(4) Although GAO in the normal execution of its audit programs might not necessarily press for the foregoing categories of information, the point is that in the absence of an agreement any auditor has a right in a normal audit situation to any information he believes to be relevant to his audit mission. Hence the importance of treating the principle here involved as an issue for open resolution.

(5) The Task Force believes it is important to emphasize that this proposed audit limitation cannot be monitored simply by denying access to financial vouchers covered by DCI certification under section 8(b). Much of such information is not related directly to specific disbursements, hence it is important to establish the broader principle of denying access not on the basis of DCI certification of funds but on the basis of the substance of the information.

(6) There is general recognition in relation to all of the foregoing the Agency has never been immune to the risk of unauthorized disclosure by its own employees either by carelessness or by design, particularly on the part of employees who have terminated their Agency association. The risk of such leaks is of course minimized by a large body of security practices with heavy emphasis on compartmentation and the need-to-know principle. The missing ingredient in security practices is of course the lack of a law (which the Director has requested) which would impose penalties against unauthorized disclosures.

B. Audit Options

1. Assumptions

a. For the purposes of this report it is assumed that whether or not resumption of GAO audit is based on a legislative directive, there will necessarily be negotiations between the Director and the Comptroller-General to establish the general parameters for the scope of audit and related arrangements. In this context it is urged as a precondition to resumption of any GAO audit relationship:

(1) that all GAO personnel to be involved directly or indirectly in such audits be subject to identical security arrangements as pertain to Agency personnel, i.e., full security clearance(s), execution of secrecy agreements, and observance of the compartmentation principle to the maximum practical extent.

(2) that audit reports be subject to review and sanitization by the Agency to protect sensitive intelligence sources and methods.

(3) that classification and distribution of audit reports also to be subject to Agency review.

(4) that all written materials used or developed in conjunction with the audits be secured in accordance with Agency security standards.

b. It is further assumed there will be a direct correlation between the foregoing security and control arrangements assuring protection of sources and methods and the agreed upon scope of audit; i.e., the extensiveness of scope agreed upon will be contingent upon the security and control arrangements.

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2. Specific options.

After full exploration of the range of viable options for consideration, only two are considered viable in the circumstances. Resumption of a limited audit of pre-1962 scope is not included because there is nothing to suggest such an approach would be more palatable to GAO today than when it was discontinued. The two options are as follows:

a. Systems Audit (Least Impact)

(1) Review of Agency Audit Staff procedures, the Agency Accounting System and supporting procedures for Agency financial administration. Such a periodic systems audit or review could provide Congressional Oversight Committees with an independent evaluation and confirmation that generally accepted accounting principles and standards are being observed by the Agency in its stewardship of public funds and that audits are conducted in accordance with Federal Audit Standards.

(2) It is the consensus of the Task Force this type of review could be accommodated without undue risk to unauthorized disclosure of intelligence sources and methods. As a matter of precedent the Agency on its own initiative in 1973

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engaged [REDACTED] to review Agency audit practices. This review also would have the advantage of placing the Agency in compliance with the GAO requirement upon Federal agencies generally for GAO review and approval of Agency accounting systems.

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b. Full Scope Audit in accordance with GAO Standards with Limitations on External Verification (para 3a below).

(1) Full access to internal fiscal and program documentation for all CIA activities excluding access to:

(a) "Identities of ~~secret~~ agents, sources and persons and organizations involved in operations which, if disclosed, would subject them to personal physical danger, or to extreme harassments, or to economic or other reprisals."

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(d) "Specific details of sensitive intelligence methods and techniques of collection."

(2) It is the consensus of the Task Force this type of review would create an increased potential risk to unauthorized disclosure of intelligence sources and methods which would increase in direct proportion to any erosion of the areas to which GAO should be denied access as stipulated above. General public knowledge and awareness of these expanded scopes of audit could also serve as a deterrent to



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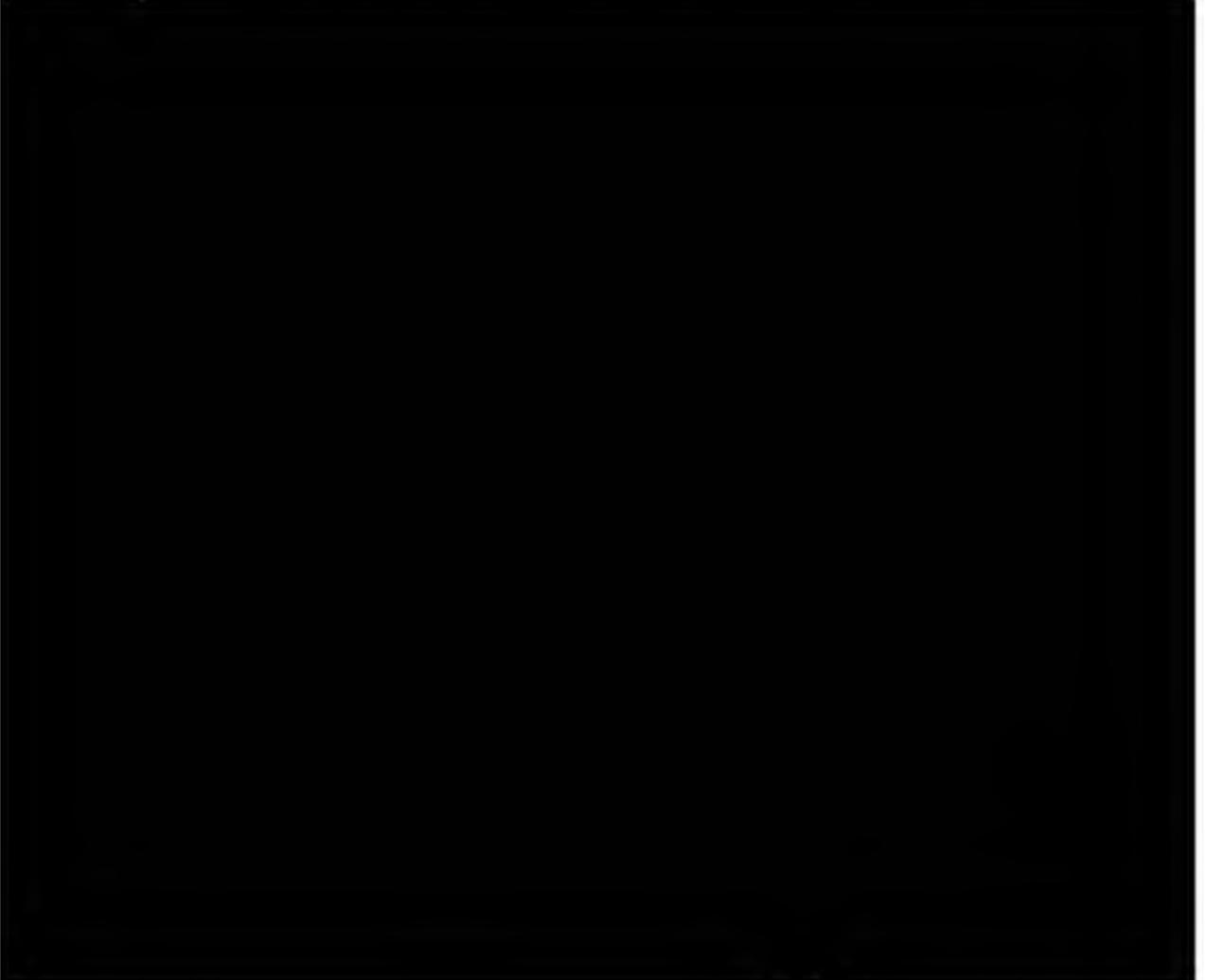
so necessary to the accomplishment of the overall Agency mission.

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3. Audit Limitations

a. It must be recognized by all concerned that the question of denied access to information is separate and distinct from the issue of prohibiting actions conventional for auditors that would actually compromise sensitive activities or programs. More



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b. Although the audit option described in (2) above envisions full access to internal documentation with the exceptions specified, circumstances will inevitably arise where there will be differences of view between the GAO and Agency components as to the scope and definition of information to be denied. As a forum for establishing and administering guidelines for

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identifying denied material it is suggested a Senior Review Panel comprised of the Associate Deputy Directors be established. Issues not satisfactorily resolved by the Panel would necessarily be referred to the Director for resolution directly with the Comptroller General. It is suggested this Senior Review Panel above should also provide a forum for resolving any differences of view between Agency components and GAO concerning areas in which external verifications are suitable.

IV. RECOMMENDATIONS

1. It is recommended that the Director ask the General Accounting Office to enter into a Systems Audit relationship with the Agency as discussed in Paragraph III.B.2(a) above subject to the assumptions stated in Paragraph III.B.1.

2. It is recommended, should it become necessary to allow GAO to resume an audit relationship, that the Director negotiate the audit relationship described in Paragraph III.B.2(b) above subject to the assumptions stated in Paragraph III.B.1.

V. PROPOSED ACTION FOR IMPLEMENTATION

The following steps are suggested as a basis for implementing either of the above recommendations.

1. Decision by the Director as to adoption of recommendation No. 1 or No. 2.

2. Discussion by the Director with the Comptroller-General of the general concept being proposed for resumption of relationship between GAO and the Agency.

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3. With agreement in principle name an Agency officer (e.g., DDA) to be responsible for further discussion with a designated Comptroller General representative about the arrangements for resumption of arrangements.

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MEMORANDUM FOR: [REDACTED]

SUBJECT: GAO Task Force Draft Paper

I believe the initial draft of the Task Force paper should be reorganized. I believe the following outline for the paper would be more suitable:

I. Preface

This short section should include the type of information included in the first two pages of the present introductory section, i.e. the nature of the assignment, how and why it was levied, a sketch of how the Task Force went about its business, any notable problems encountered, and the fact that the following sections reflect our conclusions.

II. Introduction

This section should include a brief discussion of the history of GAO relationships with CIA. It should discuss the nature of the audit GAO now conducts of other Government agencies, stressing the comprehensive, program scope of their present audit. The paper should then discuss what this audit would mean to CIA.

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[REDACTED] discussed this at a couple of the meetings--what we might expect from the GAO audit. He emphasized they would not examine every pay slip or travel voucher, but that they would be looking for duplication in the major technical programs, such as any duplication between NPIC and IAS. Although some discussion of the conceptual audit options would be worthwhile at this point, it is my belief that any limitations on the GAO audit will be limitations on the type of information to which they have access (e.g., we may be able to withhold the names of cooperating foreigners). I cannot foresee that they would conduct anything but a comprehensive program audit. In this connection it seems to me that there is an additional option not mentioned in section 3 of the present paper. Option 3 is a "full scope fiscal audit" but the description of this section indicates it will not really be "full scope," as key data will be excluded from GAO purview. The other option would be a true "full scope fiscal audit," an audit with no overall program evaluation but with complete access to all internal fiscal documentation.

III. This section would be the real guts of the paper. It should lead off by stating the kind of information in paragraph 3 on page 1 and paragraph 2 on page 4, namely that the Task Force concludes that certain CIA activities are simply not compatible with the GAO audit and that the DCI must categorically refuse to permit these activities. We must then produce a comprehensive list of all of these activities, which will be integrated into this section. In the present paper this data is presented as Exhibit A, and this list includes only "representative examples" of "verboten" activities. I believe this list is the essence of what the Task Force was asked to provide, and a representative list just won't do. The Task Force should discuss each item in this list and reach agreement that each cannot be undertaken by GAO. I believe this is what the Director expects from the Task Force.

IV. In addition to those activities which would be destroyed by a GAO examination, even if there were no leaks, the Task Force views certain Agency information as so sensitive that the Director should attempt to preclude GAO examiners from gaining access to this material. The information in the fourth paragraph on page 1 should be included in this section. Here again the Task Force must set forth a list of all items we feel the Director should attempt to keep from GAO. This list might include items such as the identities of secret agents and Americans who deal with us only if their confidentiality is insured, in contrast to items such as actual contact with secret agents or Americans which would be part of the list provided under section 3. The Task Force should discuss each of these items and reach agreement that they must be included in this list. We might also seek some Office of Security inputs on this point.

V. This section should detail the procedures of GAO access that the Director should propose, such as, hypothetically, GAO review will only take place at CIA buildings, no raw materials are to be removed from these buildings, proposed guidelines for content and control of GAO reports, and a mechanism to dissolve CIA-GAO disputes, such as the senior review panel proposed in the first paragraph of page 4 of the present paper. I think this mechanism needs full discussion by the Task Force. My own guess is that this might be handled better by a single official, such as the DDA, rather than a panel.

Those are my recommendations for the organization and content of the Task Force paper. One question I have not resolved in my own mind and I have not addressed in these remarks is what treatment we give in the paper to the very valid point made in the last sentence on page 3. I am not certain where this point should be made in the paper and how it should affect our recommendations as to the specific items included in the two lists I propose.



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Assistant Legislative Counsel

OGC 75-4037

4 November 1975

MEMORANDUM FOR: [REDACTED], Chairman, GAO
Task Force

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SUBJECT : Report of Agency Task Force Review of
GAO Audit Options

REFERENCE : Memorandum for Members of GAO Task Force
from [REDACTED] dtd. 17 October 1975

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1. In response to the referent memorandum and the report attached thereto, it is proposed that the final GAO Task Force report soundly endorse the continuation of the Director's 8(b) authorities free of any ambiguities about how these might be compromised under the terms of an audit agreement with GAO. It should be made clear that as to certain funds expended by the Agency there can be no review and certification beyond the Director's certification that the funds were expended for objects of a confidential, extraordinary or emergency nature.

2. While it may not be desirable to define the perimeter of the area in which the Director may so act in terms co-extensive with the area of today's unvouchered funds expenditure, some such reservation of authority should be made a part of any agreement under which GAO resumes its audit function at CIA. It may be an oversimplification to consider the alternatives of a limited GAO audit of pre-1962 scope on one hand and a full fiscal audit on the other without recognizing that there may be acceptable alternatives lying in the middle ground.

3. It is probably not the case that all expenditures falling into the unvouchered funds category are unreviewable by GAO. But rather than jump immediately, because of this fact, to a position where GAO has full access to all internal fiscal documentation for CIA may be unwise, as well as unnecessary, when a more carefully drawn definition of confidential funds is all that is required.

4. Full access to all CIA internal fiscal documentation would mean the end of any meaningful exercise of the Director's 8(b) authority. The Agency continues to undertake projects of a sensitive nature and of a type that the 8(b) authority was designed to make possible. Clearly, the purpose of 8(b) was to permit the President to direct his intelligence chief to undertake intelligence initiatives of a sensitive nature without opening them up to the normal reviewing bureaucracy of the Government. In this fashion knowledge of certain matters extremely critical to the welfare of the nation can be limited to those members of the intelligence community, of the military community and of the congressional leadership whose participation is necessary to make the undertaking a success. Exposure of an undertaking of a project of this nature to a circle larger than those whose participation is absolutely necessary is simply anathema to the success of the operation.

5. This self-evident proposition has been recognized from the earliest days, and at the highest levels, of our Government. General Washington in a letter dated 26 July 1777 to one of his intelligence officers, Elias Dayton, stated:

. . . The necessity of procuring good Intelligence is apparent and need not be further urged---All that remains for me to add, is, that you keep the whole matter as secret as possible. For upon Secrecy, Success depends in most Enterprises of the kind, and for want of it, they are generally defeated....

Under the Continental Congress, the Committee of Secret Correspondence, which had an intelligence gathering mission, refused to reveal the contents of a dispatch from an American spy in England, stating that:

. . . Considering the nature and importance of it, we agree in opinion, that it is our indispensable duty to keep it a secret, even from Congress....
We Find, by fatal experience, the Congress consists of too many members to keep secrets." (emphasis added) (Force, American Archives Fifth Series, II, 818.)

This clearly is an official recognition of the principle that in endeavors depending on secrecy for success widening the circle of witting beyond those necessary to carry out the endeavor is an invitation to failure. The manifest need for a capability to conduct some matters, and necessarily

fund them, in secret was very much a part of the thinking of the Founding Fathers during the period the Constitution was written and adopted. With the adoption of the Constitution, the executive power passed to the President and with it the principal responsibility for the conduct of foreign relations. Commenting on this new distribution of power, John Jay, whose diplomatic experience in the service of Congress during the Revolution and the Confederation had given him insight into the weaknesses and requirements of American practice, discussed the problems of conducting secret foreign intelligence gathering in these terms:

. . . There are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery. Those apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions who would rely on the secrecy of the President who would not confide in that of the Senate, and still less in that of a large popular assembly. The convention have done well, therefore, in so disposing of the power of making treaties that although the President must, in forming them, act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such a manner as prudence may suggest. (The Federalist)

This is exactly what we are talking about when we debate the status of the Director's 8(b) authority in the face of the proposal for GAO audit, the ability to "manage the business of intelligence in such a manner as prudence may suggest." Prudence will sometimes require that the auditors not be involved until an undertaking has passed an especially critical, or sensitive, phase.

6. The capability of carrying out certain operations in the interest of the United States Government in an extremely secret fashion is a capability that has been continued down through the nation's history. President Washington asked for, and got, a secret "contingent fund" expenditures from which he could account for "by making a certificate. . . of the amount of such expenditure, as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sums therein expressed to have been expended." (Stat. at Large, I, 299). This fund was used by Washington and successive Presidents for their foreign intelligence efforts, and it was well understood that

the existence of the fund was grounded on the need for extreme secrecy in certain matters. This rather special capability comes down to us in present times of more complex government in the form of statutory authority for the President's Director of Central Intelligence to exercise control over the expenditures of confidential funds. This is the Director's 8(b) authority the actual terms of which closely parallel the authority given President Washington. The capability for the Government to fund certain sensitive undertakings in a manner consistent with the requirements for strictest secrecy has never been lost or abandoned throughout our history. Yet it is this very capability that is threatened by a proposal for full access to internal fiscal documentation for intelligence activities by GAO auditors. It is not necessary to extinguish all capability to operate with the utmost secrecy when the problem actually confronted is that not all activities excluded from audit need be.

7. It is proposed that in the process of arriving at an agreement, in accordance with the terms of which GAO will resume an audit function at CIA, it will be made clear from the outset that there would remain an enclave for expenditures not reviewable by GAO. It is the boundaries of that enclave, and the terms and conditions of its use, that should be made the subject of negotiations setting the guidelines for a renewed GAO audit. The boundaries of that enclave quite possibly would enclose a smaller portion of confidential expenditures than they have in the past. And they should probably be reserved for the most sensitive of projects, where, for instance, the very involvement or interest of the United States Government in a certain area is explosive information. There should also most probably be a time dimension to the use of secret funding, with an audit of a project routinely taking place after its most critical phase had been passed. In any event, such a secret funding mechanism should be preserved in addition to specific exclusions, such as the names of agents, within the areas that do become subject to routine GAO audit.

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Office of General Counsel